

insomnia causally related to her federal employment. She reported that she had an anxiety attack on September 8, 2006, and had begun taking blood pressure medicine on September 22, 2006.

Appellant submitted a narrative statement dated October 16, 2006 describing the following incidents: (1) on September 8, 2006 the manager of customer service operations, Michael Hernandez, rescinded approval of her request to change her duty assignment and he yelled "Do you understand that?"; (2) Mr. Hernandez required her to bring medical documentation on September 14, 2006; (3) the manager called her at home on August 21, 2006 at 9:30 p.m. to discuss a nonemergency work matter; and (4) her request for Family Medical Leave Act sick leave was denied. In an October 30, 2006 statement, she reported that she had begun working as an acting station manager on February 1, 2006 and her detail ended September 8, 2006. Appellant alleged that "[d]uring my entire detail assignment I operated the unit without the required EAS [Executive and Administrative Schedule] staffing." She stated that she used acting supervisors to carry mail rather than supervise. The record also contains a September 28, 2006 Equal Employment Opportunity (EEO) "Information for Pre-Complaint Counseling" form in which appellant alleged that she was subject to harassment and discrimination.

By decision dated April 10, 2007, the Office denied the claim for compensation. It found appellant had not substantiated a compensable work factor.

On April 18, 2007 appellant requested a review of the written record. She alleged that she was required to work excessive overtime, working 10- to 12-hour days up to 6 days a week. Appellant was also required to work without adequate staffing which increased her workload. She submitted an April 16, 2007 statement from a coworker, Jimmy Newsome, who indicated that he worked as a 204-B supervisor and during the time appellant was acting station manager he carried mail at least once a week due to staffing shortages. In an April 20, 2007 statement, another coworker, Mary Evans, reported that while appellant was acting manager "almost every day I had to stop supervising to carry mail due to carrier staffing shortage." Appellant also submitted a June 8, 2006 letter of warning she received for unsatisfactory performance on June 2, 2006.

By decision dated July 5, 2007, the Office hearing representative remanded the case for further development. The hearing representative found the witness statements from Mr. Newsome and Ms. Evans were sufficient to require further development as to the allegation of a staffing shortage.

The Office requested that appellant's supervisors submit a response on the staffing issue. In a letter dated July 18, 2007, Bobbi Fretwell, an employing establishment supervisor, stated that 204-B supervisors were used to supplement the supervisory force and it was not unusual for them to carry or process mail. In a letter dated April 20, 2007, she stated that it was common practice to detail employees for upward mobility and to utilize 204-B supervisors for training purposes. Ms. Fretwell stated that to her knowledge there was no time that appellant's station was inadequately staffed in management positions and no documentation of an additional supervisor being requested.

In a February 22, 2007 statement, prepared as part of appellant's EEO claim, Mr. Hernandez denied berating or yelling at appellant. He indicated that he called appellant at home on August 21, 2006 because she had not called in to clear her unit. Mr. Hernandez indicated that he accepted appellant's request to end her detail in September 2006 and he assigned her to a station near her home. In addition, he stated that there was adequate staff in place when appellant was detailed and she did not request assistance from another supervisor.

By decision dated October 11, 2007, the Office denied the claim for compensation. It found that no compensable work factors had been established.

Appellant requested reconsideration of her claim by letter dated October 15, 2007. She argued that the evidence was sufficient to establish her claim. Appellant submitted additional medical evidence and a report indicating that she worked 10 hours on January 27, 2007.

In a decision dated November 2, 2007, the Office determined that the request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.¹ This burden includes the submission of detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³

A reaction to an administrative or personnel matter is generally not covered as it is not related to the performance of regular or specially assigned duties.⁴ Nevertheless, if the evidence demonstrates that the employing establishment erred, acted abusively or unreasonably in the

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Roger Williams*, 52 ECAB 468 (2001); *Anna C. Leanza*, 48 ECAB 115 (1996).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Brian H. Derrick*, 51 ECAB 417, 421 (2000).

administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁵ With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁶ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁷

ANALYSIS -- ISSUE 1

Before the medical evidence is considered in an emotional condition claim, it must be determined whether appellant has substantiated a compensable work factor. In this case appellant has generally alleged: (1) conflicts with a supervisor, Mr. Hernandez, which appellant characterized as harassment; and (2) a staffing shortage, which appellant appears to allege resulted in long work hours and an increased workload. As to the first allegation, the record reflects that appellant filed an EEO claim. There is, however, no evidence that a finding of harassment or discrimination was made, nor any evidence submitted sufficient to establish a compensable work factor based on harassment. There were no witness statements or other corroborating evidence regarding an allegation of harassment.⁸

With respect to the specific incidents alleged, such as an August 21, 2006 phone call to appellant's home, there was no evidence sufficient to establish a compensable work factor. Mr. Hernandez explained that he called appellant because she had failed to call in to clear her unit. In addition, Mr. Hernandez denied yelling at or berating appellant.⁹ As to specific administrative actions alleged, such as the denial of leave or a change in duty assignment, there was no evidence of error or abuse presented. Appellant's request to end her detail as acting manager was accommodated, and there is no probative evidence of error or abuse in an administrative matter.

The allegations included an assertion that the staff provided was less than "required." But no evidence was presented that any specific staffing requirements were not met in this case. It appeared that appellant's primary concern regarding staffing was that during the detail commencing in February 2006 as acting station manager she had to work long hours. To the extent appellant is alleging that she had an emotional reaction to a heavy workload, she must

⁵ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

⁶ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁷ *Helen P. Allen*, 47 ECAB 141 (1995).

⁸ *See Robert Breeden*, 57 ECAB 622 (2006). It is noted that the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined by the EEO Commission. In evaluating claims under the Act, the term "harassment" is synonymous with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by a coworker. *Ronald K. Jablonski*, 56 ECAB 616, 620 (2005).

⁹ The Board has held that the raising of a voice during the course of a conversation does not in itself warrant a finding of verbal abuse. *Carolyn S. Philpott*, 51 ECAB 175, 179 (1999).

provide a detailed allegation and supporting evidence.¹⁰ In this case, appellant did not provide a detailed description of her workload or submit supporting evidence. It is not clear what specific job duties were performed as acting station manager. The witness statements from her coworkers reported only that they had to carry mail at times, without discussing appellant's workload or her work duties. Appellant did not submit probative evidence documenting and supporting an allegation based on a heavy workload.

The Board finds that the evidence of record does not establish a compensable work factor with respect to harassment, administrative error or abuse, overwork or any other allegation. Since appellant has not established a compensable work factor, the Board will not address the medical evidence.¹¹

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.¹² The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹³

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.¹⁴

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

The October 15, 2007 application for reconsideration argued that the evidence was sufficient to establish the claim. Appellant did not cite any specific point of law and argue the

¹⁰ See *Sherry L. McFall*, 51 ECAB 436 (2000).

¹¹ See *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.605 (1999).

¹⁴ *Id.* at § 10.606(b)(2).

¹⁵ *Id.* at § 10.608.

Office had erroneously applied or interpreted the law, or advance a new and relevant legal argument. As to the evidence submitted, appellant did not submit new, relevant and pertinent evidence on the issues presented. The daily hours report, for example, referred to only one day that occurred after appellant's detail as acting station manager had ended.

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office. Because appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2), the Office properly denied the application for reconsideration without merit review of the claim.

CONCLUSION

Appellant did not establish a compensable work factor and therefore did not meet her burden of proof to establish an emotional or physical condition causally related to her federal employment. On reconsideration appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) and the Office properly denied her application without merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 2 and October 11, 2007 are affirmed.

Issued: July 24, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board